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## LEGAL AND ETHICAL ISSUES SURROUNDING THE ONLINE DISSEMINATION OF AUDIOVISUAL ARCHIVES: NEEDS, PRACTICES, AND SOLUTIONS DEVELOPED IN FRANCE

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### 1. Introduction

Providing citizens with easy access to the results of research via online dissemination can revitalize the relationship between science and society. If research in the humanities and social sciences, and in particular their audiovisual sources, are to be included in this movement, an effort has to be made to understand and adapt to the requirements of online dissemination. Until recently, furthermore, audiovisual archives were rarely consulted by the public. Embracing the digital turn, therefore, will also represent an important shift for archival managers and researchers.

Two main questions can be posed regarding the accessibility of these audiovisual collections. First, how can online dissemination be reconciled with the ethical and legal respect due to persons and institutions involved in qualitative research projects? Issues of authorship, copyright, and confidentiality have to be taken into account. Second, how can the slow internal process of collecting, archiving, and disseminating such collections be combined with various external demands for rapid online visibility of the project and its results? With a focus on audio sources for the humanities and social sciences, this paper will outline possible answers to these questions by providing case studies of solutions currently being used and developed in France. These case studies will be described from the viewpoint of both the archivists and producers of such archives.

### 2. French context of these legal and ethical issues: background and current practices

#### 2.1. General development of dissemination practices in France

The status of the informant or interviewee is at the core of the shift over the last forty years in the legal and ethical questions associated with interview processes and outcomes. The link between the informant and the researcher was once seen as a purely unilateral relationship where the interviewee was only supplying knowledge and the interviewer was in charge of the encounter. As a consequence, researchers only acknowledged informants as contributors to a collective discourse.

Until the 1990s, researchers did not sign recording agreements with their informants when conducting interviews as this was thought to be unnecessary and even counter-productive for their fieldwork activities. When humanities researchers started to follow in the footsteps of their colleagues from the social sciences—answering Philippe Joutard's 1979 call for "historians, [to] pick up [their] microphones"<sup>45</sup>—it was still with the idea that they were the only authors of the recordings.

Indeed, French researchers, in their enthusiasm for going out into the field, were far from imagining that their recordings would be of interest to anyone other than themselves and their peers. But in the 1970s and 1980s, nevertheless, their watchwords were "collective memory" and "identity memory;" and they sought to record collections of "oral literature." Publications

45 He was inspired by the oral history movement that had started in the 1940s in the United States and later in the United Kingdom, where Paul Thompson's first guidebook to oral history was published in 1978: *The Voice of the Past: Oral History*. Philippe Joutard translated this book into French in 1983.

such as those by Marie-Marguerite Pichonnet-Andral<sup>46</sup>, a researcher and sound archives manager at the Museum for Popular Arts and Traditions (Musée des Arts et Traditions Populaires<sup>47</sup>), insisted that this literature constituted collective heritage and as such, legally speaking, belonged in the public domain.

Today, individuals who provide information are given greater consideration than they were forty years ago: it is acknowledged that they are active participants in the interview-making process. This shift is the result of researchers' reflection on inter-subjectivity and interactions between interviewee and interviewer.<sup>48</sup> Moreover, landmark texts such as the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003)<sup>49</sup> have contributed to this change and have helped increase awareness of a shared responsibility—not just limited to cultural elites—for the sources of collective knowledge.

## 2.2. Impact of online dissemination: new demands and new actors

With the availability of digital tools from the 1990s onwards<sup>50</sup>, and the use of these tools in disseminating research findings, new ethical and legal questions were posed when making interviews public. The potential audience was suddenly much wider than it used to be for publications, exhibitions, and even radio and TV documentaries.

In addition to this new visibility of their work, interviewers are now solicited by new actors in the research field. Since the 2000s, funding institutions, such as ministries, research laboratories, major corporations, or national organizations dedicated to digitization, have all become key commissioners of projects involving digital or digitized interviews. In line with recent reforms premised upon the notion that research projects must demonstrate their economic impact in order to receive funds and support, these institutions often want to retain total control over the recordings made during the research projects that they finance.

This control over the sources created by researchers, and their dissemination, enables funders to justify investing money and using recordings for internal and external communication, training programmes, and paid distribution, among other options. On the other hand, online access to sources is also often a condition for obtaining public funds, in line with policies that promote generalized use of and access to new information and communication technologies (ICT) as a factor of education and innovation in society.<sup>51</sup>

As a result, these new actors in the research world have contributed to ensuring better quality preservation and visibility of audiovisual archives. Yet questions still surround recordings with unclear legal status (because no copyright contract can be found) and those that do not allow online display. Some items from a collection or even some entire collections may, therefore, not be included in the digitization and dissemination process. This raises two major problems: these recordings may be set aside and may become invisible, and this, in turn, may have an impact on the integrity of collections.

46 For forty years, Claudie Marcel-Dubois and Marie-Marguerite Pichonnet-Andral have collected five thousand hours of recordings, mainly songs, music, and tales, across France.

47 In 2013, this museum was renamed as the Museum of Europe and Mediterranean civilisations (*Musée des Civilisations de l'Europe et de la Méditerranée*, MuCEM).

48 See for instance the chapter on "Ways of listening: different approaches to interviewing" in *The Oral History Reader*, ed. by Robert Perks and Alistair Thomson (London: Routledge, 2006).

49 The text can be found on the UNESCO website: <http://www.unesco.org/culture/ich/en/convention>

50 See for instance the list of "Oral history websites", first published in 1999 by Robert Perks in the 27th edition of the *Oral History journal*.

51 For example, France's Ministry of Culture will only provide finance for digitization through its National Digitization Programme for which one of the conditions is that the entire collection must be accessible online.

Until recently, target publics have not shown much interest in these questions. But there is now a strong demand for the restitution of archives from various social actors: media professionals, teachers and trainers, artists, performers, documentary-makers, and ordinary citizens. In addition, communities and individuals are also now seeking archives of their own history and intangible heritage. In the context of the democratization of digital tools and the generalization of their use, they do not understand why recorded interviews cannot be re-used.

### **2.3. A case study of this shift: the Sound Archives of the Mediterranean Research Centre for the Humanities<sup>52</sup>**

This Sound Archives centre was opened in 1979 within the premises of the University of Aix-en-Provence.<sup>53</sup> Its first collection comprised interviews recorded by two researchers, Philippe Joutard, a historian, and Jean-Claude Bouvier, an ethno-dialectologist. Their objective in creating such a centre was to offer a place where researchers using field material could preserve their recorded sources and share them with other researchers. Their long-term objective was to establish a vast corpus of sound archives for researchers in several humanities and social sciences fields: ethnology, sociology, linguistics, political sciences, history, geography, musicology, and literature.

These two pioneers were unsure how to organize the new collection. They decided that informants would not be identified by their names but only with a number. Only the researcher's name would be mentioned in the description of the sources. All personal information relating to the interviewees would be available in the files provided along with the recordings. Even though there was then no legal requirement to maintain anonymity, the two researchers gave no clear reasons for this decision. They had to invent rules for organizing the records that would allow easy access at a time when there was still very little experience in this field to draw upon. As a result, legal implications were simply not taken into consideration.

In 1997 these sound archives were transferred to the Mediterranean Research Centre for the Humanities in Aix-en-Provence where more audiovisual sources, recorded by researchers from fields other than history and ethno-linguistics, were added to the growing collection. A few years later, the database<sup>54</sup> of the collection was made available on the Internet and, almost immediately, informants or their relatives recognized their contributions to field research from details provided in, or circumstances relating to, the interviews. They contacted the Sound Archives and asked to be given copies of the recordings. They also wanted their family names to be clearly included in the database and the recordings to be made available via open access.

After 2000, following discussions with researchers who had donated interviews, the informants' names started being systematically included in the description of recordings entering the sound archives database. Obviously, there were some exceptions. These mainly occurred when researchers specifically requested anonymity for informants or when they only provided codenames in order to ensure their anonymity. The Sound Archives now holds 8,000 hours of digitized and digital recordings, the results of field research conducted between the 1950s and today. More than 1,000 hours are now available in open access, via the online catalogue of the research centre, and in conformity with current legal and ethical rules.

Today in France, the online dissemination landscape includes diverse practices. These vary from providing access to the description of records only to making interviews available via extracts or even in their entirety. For many owners of fieldwork recordings such as interviews, however, the legal and ethical issues surrounding this dissemination remain opaque. And yet it is

52 The *Maison méditerranéenne des sciences de l'homme* is part of a network of 22 national research centres specialized in the Humanities and Social Sciences.

53 In 2012 the University of Aix-en-Provence was reunited with two other universities and is now part of the University of Aix-Marseille.

54 This database can be accessed via the following link : <http://phonotheque.mmsh.univ-aix.fr/>.

imperative that archivists and researchers understand these issues and adapt their methods to opening up these resources to the public. This need is especially acute because researchers are not only under pressure to place them online and make them available to the widest possible audience, but to do so quickly, often while the research project is still ongoing.

### **3. Researchers' needs, pressure for rapid online visibility, and solutions found so far for ethical and legal problems posed by online dissemination**

#### **3.1. New needs of researchers**

With the possibility and necessity of disseminating their audiovisual sources on the Internet, researchers are faced with a paradoxical situation. On the one hand, it has never been easier to access pictures, films, and sounds, thanks to the proliferation of documents available on the web and the availability of affordable and easy-to-use digital tools and software for capturing and displaying new research materials. On the other hand, restrictions limiting or even preventing the dissemination of many of these sources have also multiplied, due to researchers' new legal and ethical obligations.

Researchers have, therefore, new needs. Often it is archival managers' role to satisfy them. In their everyday work, they are worried about a wide range of apparently inextricable legal questions that they must take into account: copyright, informants and relatives' rights, interpreters' rights, privacy, database and public information protections, publishers' rights, and respect for trademarks, among others. In addition, ethical constraints can seem particularly restrictive for interviewers. Collected sources, for example, may contain information that can be prejudicial for individuals or communities in which they were produced, or for the person carrying out the research.

And yet, at the same time, fieldwork is increasingly important, both within and outside the academic world. Since the 2000s, it is more and more common in France to collect recordings and to use methods such as oral history in cultural and research projects. Audiovisual sources are now part of archives collections inspired by both social sciences and humanities disciplines and stored in university departments, research libraries, local archives centres, museums, private and public institutions' heritage departments, and cultural organizations. In addition to recordings, documents produced during research such as field notebooks are now being enhanced. They can now, for instance, be seen in exhibitions, where they provide background information on the objects or audiovisual recordings on display. They are considered to be 'archival material' and, as such, become cultural heritage.

#### **3.2. Issues arising from the pressure for rapid online visibility and approaches developed to tackle them**

The rapid development of efficient digital tools and infrastructures, combined with the demands by new social actors described above, mean that online visibility must be achieved quickly. But, as will be outlined below, putting qualitative audiovisual material online requires time, at least if legal and ethical imperatives are to be respected. The slowness of the process of archiving, editing, and uploading such data conflicts with the need for rapid online visibility.

This conflict is perhaps best illustrated by issues arising from the visibility and audibility of oral history online. Several ethical and legal questions are posed by choosing to upload interviews in full and not just extracts. These call for choices to be made about the content and identity of the recordings. Oral history interviews are situated at the intersection of private memory and public memory.<sup>55</sup> As such they typically deal with events that are landmarks in community

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55 See Anna Green's article on that topic: "Can memory be collective?" in *The Oxford handbook of oral history*, ed. by Donald Ritchie (New York: Oxford University Press, 2011).

or social memory and should therefore be made available to a maximum number of people in society. But they are also narratives told by particular persons and dealing with particular lives, families, career paths, and so forth. Interviewees must be respected as both individuals and authors.

The question is how to distinguish, if possible, between the domains of public and private memory. As a guide we should follow the interviewees' wishes. These wishes can be expressed in two different ways: either during the encounter (whether said off-record, during the interview, or as something to be written down but not recorded) or as an option selected when signing recording agreements (choice between different mediums of display, anonymity, dissemination of personal and family pictures and professional information). The law, secondly, cannot be ignored. In the French context, the laws of intellectual property, information, and cultural heritage are used to regulate research interviews. Efforts to respect these laws have to be made by seeking to protect not only interviewees but also their families, persons named in the records, interviewers, and the organization hosting the cultural or research project.

There are ethical and legal reasons why secrets should not be revealed and traces of defamation should not be preserved, but it is often the case that oral history interviews contain precisely such sensitive information. If one wants to avoid a choice between simply uploading the entire interview or only a brief description of it, a series of complementary alternatives are available to the archives manager. First, it is possible to edit the recordings by making audio cuts in the content or anonymizing the interview (this can be done either by deleting everything that helps to identify the interviewee or, alternatively, only those parts containing sensitive information which could be used to identify people the interviewee is talking about). A second option is to ask witnesses to double check the records before they go public, ensuring they are aware of what could be heard by the public. Lastly, one might want to establish different degrees of access to the records: a "light" version for the general public and a more complete version for persons specialized in the topics covered by the interview, mainly researchers. This can be achieved for instance via a system of passwords used to access different parts of the sound archives website.

These legal and ethical challenges, which arise from the decision to put qualitative audiovisual material online, can only be tackled with careful planning of the whole archiving and dissemination process. This process, however, can be extremely slow as illustrated by the following case study.

### **3.3. A case study of these ethical, legal, and archiving issues and the development of a method: the online audio repository of the French Railway Historical Society**

These issues have been posed during the course of a still on-going three-year oral history project conducted by the French Railway Historical Society. It began in 2011 and was commissioned by the French national railway company in order to give a voice, for the first time, to those of its former employees who had lived and worked during World War II. Altogether two hundred audio interviews (four hundred hours) have already been collected. Between April and October 2013, twenty-eight interviews have been made fully accessible on the website *Mémoire orale de l'industrie et des réseaux*.<sup>56</sup>

The collection is comprised of semi-structured face-to-face interviews with former railway workers, today in their nineties, or with their close relatives (such as widows, children, and grand-children). Each recording lasts between one and five hours and for each a five-page agreement form is signed. They deal with everyday life and work in the French railway community between the 1930s and 1950s; they encompass many themes, such as life in company

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56 This website, which was created in 2007, is a collective repository of oral history interviews that deal with French industrial heritage. It can be accessed via the following link: [www.memoire-orale.org](http://www.memoire-orale.org).

towns, the black market, forced labour in Germany, the presence of occupying forces, family life, bombings, deportation, resistance activity, post-war reconstruction, and the memory of this period.

The project team's objective was to create new sources for researchers specialized in this period and topic. The aim, correspondingly, is to make the interviews as widely available as possible with the hope that they will be used by researchers and anyone interested in this subject. Because this interview collection deals with sensitive episodes and subjects that are still controversial in France, it is crucial to be careful with what is uploaded. The memory of the war is still very present in society and conflicts are ongoing, especially in the areas of collaboration, resistance, and deportation. But, in addition to this national context, the interviews also often contain information about a variety of sensitive themes associated with the interviewee or someone named during the interview. This can include private life (such as information about current or past health, or family issues such as divorce and adultery) and violence (either when a crime is revealed or someone accused of it, or when the interviewee describes a violent episode in ways that may shock listeners if they are not warned in advance).

Four key principles were agreed upon by the team members to guide them in tackling these challenges. First, keeping track of everything is essential. Both compressed and uncompressed files are stored along with edited and unedited versions of the records. When the content or the sound is edited, a technical document mentions where and why the cuts were made or the sound improved. Second, teamwork is at the core of the approach. The archival and dissemination planning was discussed by the whole team, and involved the interviewers, archivists, researchers, and project managers. Third, the choice was made to take a minimum of risk. This was because of the sensitivity of the themes and because of the degree of trust placed by interviewees in the organization (in many cases they have spoken about the period or some events for the first time). Finally, summarizing was preferred to transcribing. Even though it is just as time-consuming, writing up detailed summaries enables the creation of tools that help users to search through the interviews and to select the extracts that interest them. The records are always presented online already divided into sequences and with this accompanying long summary. In addition, and if the interviewees have agreed, their picture taken during the interview is uploaded.

The results of this archiving and disseminating process, even if satisfactory in legal, ethical, and professional terms, have been very slow to materialize. Out of fifty interviews (online or ready to be uploaded), five have been anonymised: three because the interviewee wished it and two as a result of the team's decision-making. Out of these same fifty records, cuts were made to forty of them because of ethical or legal considerations (other cuts were related to sound quality). Interviewing began almost two years ago and two hundred records have already been stored. Because of the slowness of these procedures, however, only twenty-eight are online and only thirty more will be in the very near future. On average, it takes fifteen hours to complete the storing, editing, analysing, and uploading stages of the process for one hour of recorded interviews.

It is clear that, once completed, the online collection will offer a very rich and complex picture of French society between the 1930s and 1950s, featuring an impressive diversity of regions, cultures, social classes, generations, gender, and professions. Nonetheless, this careful planning for online dissemination of full interviews has obvious limits. The tasks enabling full online access are very time-consuming and delay the development of other tools of dissemination, such as publications and exhibitions. Moreover, and even if this only happens for a marginal part of the collection, the legal responsibilities of the archivists and their team sometimes cause it to be that what interviewees ask for is occasionally not respected. Copies of interviews, furthermore, can rarely be sent to the informants quickly because of the time it takes to edit them. In many cases informants fail to understand why it sometimes takes even a year for this to happen.



### 3.4. Possible solutions at the collective level: collective guidelines

Efficient digital tools are being developed by researchers<sup>57</sup> that will soon make it easier and quicker to build online searchable databases of interview collections at an affordable price. In the meantime, however, solutions are still required to cope with the current situation, contradictory as it is. Archivists and producers of audiovisual records have to reconcile the respect of ethical and legal issues and the imperative for a quick online dissemination.

When the collection has already been constituted or when the budget and calendar of the archival repository cannot allow for such a slow process of archiving and disseminating, it is probably best to choose not to publish full interviews online. Extracts can, in such cases, be the most appropriate way to achieve online visibility while still respecting legal and ethical norms, even if the risk is that users may not contact the archives centre and come to listen to the whole recordings.

Another solution to make it easier to deal with this situation can be found in pedagogy. It may be necessary to explain to funders and to the public why the archiving and disseminating process can be so slow. More importantly, it is essential to anticipate these difficulties and to train<sup>58</sup> producers and users of such archives so that the time taken in documenting the collection, establishing copyright, or locating sensitive parts of interviews is reduced.

In 2011 these ideas inspired the establishment of a French working group that aims to create a best-practice guide for online dissemination in the humanities and social sciences. This guide is a collective project led by archivists, jurists, and researchers from a number of different fields. The objective is to propose concrete solutions for answering the questions outlined above. The drafting team uses several collaborative tools: a mailing list for people interested in these issues<sup>59</sup>, annual seminars, and a scholarly blog<sup>60</sup> where texts are posted for peer-review. These collective and interactive working methods aim to have participants' proposals on legal and ethical issues seen by as many people as possible in order to encourage debate and broad participation. On the blog, concrete matters are dealt with, such as "how to draw up a contract for the transfer of rights for an interview," as well as more in-depth ones, such as, "The contract: an agreement between the witness and the interviewer ... and a legal necessity." Interviews with Internet experts or researchers who have released their archives online are also, additionally, being recorded for the project, and important texts on legal issues, such as "Who Owns Oral History? A Creative Commons Solution,"<sup>61</sup> are being translated. The guide, finally, will include a glossary of agreed definitions and interpretations for French terms.

As the work progressed, choosing the title for the guide (*A Best Practice Guide for the Dissemination of Digital Resources in Humanities and Social Sciences*) became a real challenge, as some participants did not want to produce over-restrictive guidelines, or even a best practice guide, because some of the solutions described are not regulated by legislation and are there-

57 Such as Doug Boyd, Michael Frisch and Doug Lambert. Also see the website on "Oral History in the Digital Age" (<http://ohda.matrix.msu.edu/>).

58 Such an option has been used by the Oral History Society for several years already. The British organization conducts training sessions across the United Kingdom and offers online guidelines regarding ethical and legal issues (<http://www.oralhistory.org.uk/ethics.php#ethical-considerations>).

59 The list is still open and anyone interested is welcome to sign up. More information can be found on the project blog: <http://ethiquedroit.hypotheses.org/>.

60 The blog is located on one of the platforms created by the Centre for Open Electronic Publishing (CLEO): *Hypotheses*. This international platform contains 700 research blogs written in several languages (German, Portuguese, English, French, etc.). It facilitates collective publishing but, above all, it allows French scholars to join and contribute to the international research community.

61 Dougherty, Jack and Simpson, Candace. "Who Owns Oral History? A Creative Commons Solution." In *Oral History in the Digital Age*, 2012. Accessed October 20, 2013. <http://ohda.matrix.msu.edu/2012/06/a-creative-commons-solution/>



fore risky for those who might try to implement them. Instead, this guide will provide tools for archives managers and researchers for each stage of the online dissemination process. It is hoped that it will serve as a reminder of the essential values that managers and producers of archives are bound to respect: the integrity of collections, systematic contextualization of field work and research, current and future rights of both authors and users, and the use of available tools meeting contemporary standards.

#### 4. Conclusion

In addition to the awareness of the digital context, its rapid development, and its new requirements, research and archival communities must take into account legal and ethical issues that preceded the digital turn and which it has now exacerbated. Archivists and researchers need to find a collective response to these issues that anticipates difficult situations arising from both researchers' needs and external pressures.

In a society where the world of science must be both transparent and global, legal and ethical codes are crucial tools that everyone working in the production and use of audiovisual archives must take into account. Current legislation should be interpreted, commented upon, and questioned, and members of the academic and archival community should seek to contribute to its future development.

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